
HOUSE BILL No. 1631

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-35; IC 6-8.1-1-1; IC 35-45-5-11.

Synopsis: Pull tabs, punchboards, and tip boards. Authorizes pull tabs, punchboards, and tip boards in establishments licensed to sell alcoholic beverages to customers for consumption on the licensed premises. Makes an appropriation.

Effective: July 1, 2005.

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January 19, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1631

A BILL FOR AN ACT to amend the Indiana Code concerning gaming and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-35 IS ADDED TO THE INDIANA CODE AS A
2 **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2005]:

4 **ARTICLE 35. TYPE II GAMING IN ESTABLISHMENTS**
5 **LICENSED TO SELL ALCOHOLIC BEVERAGES**

6 **Chapter 1. General Provisions**

7 **Sec. 1. Under 15 U.S.C. 1172, approved January 2, 1951, the**
8 **state of Indiana, acting by and through the elected and qualified**
9 **members of the legislature, declares that the state is exempt from**
10 **15 U.S.C. 1172.**

11 **Sec. 2. All shipments of gambling games authorized under this**
12 **article to distributors and retailers in Indiana, the registering,**
13 **recording, and labeling of which have been completed by the**
14 **manufacturer or dealer in accordance with 15 U.S.C. 1171 through**
15 **15 U.S.C. 1178, are legal shipments of gambling devices into the**
16 **state of Indiana.**

17 **Sec. 3. This article does not apply to the following:**

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(1) The Indiana state lottery established under IC 4-30.

(2) Pari-mutuel horse racing under IC 4-31.

(3) Charity gaming under IC 4-32.

(4) Riverboat gambling under IC 4-33.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Commission" means the Indiana gaming commission.

Sec. 3. "Deal" means each separate package, or series of packages, consisting of one (1) Type II gambling game with the same serial number.

Sec. 4. "Department" refers to the department of state revenue.

Sec. 5. "Distributor" means a person licensed to distribute pull tabs, punchboards, and tip boards under IC 4-32.

Sec. 6. "Fund" means the Type II gaming enforcement fund established by IC 4-35-6-1.

Sec. 7. "Gross receipts" means the total amount of money exchanged for the purchase of pull tabs, punchboards, and tip boards by Type II gaming patrons.

Sec. 8. "Licensee" means a person holding a license issued under this article.

Sec. 9. "Licensed premises" has the meaning set forth in IC 7.1-1-3-20.

Sec. 10. "Manufacturer" means a person licensed to manufacture pull tabs, punchboards, and tip boards under IC 4-32.

Sec. 11. "Person" means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a corporation, a limited liability company, or any other business entity.

Sec. 12. "Pull tab" means a game conducted in the following manner:

(1) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player from a qualified organization.

(2) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of numbers, letters, or symbols.

(3) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.

(4) Winners, or potential winners if the game includes the use of a seal, are determined by revealing the faces of the tickets or cards. The player may be required to sign the player's

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name on numbered lines provided if a seal is used.

(5) The player with a winning pull tab ticket or numbered line receives the prize stated on the flare from the qualified organization. The prize must be fully and clearly described on the flare.

Sec. 13. "Punchboard" means a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single section to reveal a symbol or prize amount.

Sec. 14. "Retailer" means a person who is licensed:

(1) to sell alcoholic beverages under IC 7.1-3 to customers for consumption on the person's licensed premises; and

(2) to conduct Type II gambling games under a retailer's license issued under IC 4-35-4.

Sec. 15. "Tip board" means a board, a placard, or other device that is marked off in a grid or columns, with each section containing a hidden number or numbers or other symbols that determine a winner.

Sec. 16. "Type II gambling game" means a pull tab, punchboard, or tip board game.

Sec. 17. "Type II gambling operation" means the conduct of gambling games authorized under this article in a licensed establishment.

Chapter 3. Powers and Duties of the Commission

Sec. 1. (a) The commission shall supervise and administer Type II gambling operations conducted in Indiana under this article.

(b) The commission shall enforce this article.

Sec. 2. For purposes of conducting an investigation or a proceeding under this article, the commission may do the following:

(1) Administer oaths.

(2) Take depositions.

(3) Issue subpoenas.

(4) Compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

Sec. 3. The commission may adopt rules under IC 4-22-2 for the establishment, implementation, and operation of Type II gambling games and to ensure that the Type II gambling operations are consistently operated in a fair and honest manner.

Sec. 4. (a) The commission has the sole authority to issue a license to a person authorizing the person to sell, distribute, or manufacture Type II gambling games under this article.

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(b) The commission may not limit the number of qualified persons licensed under this article.

Sec. 5. The commission shall charge the following fees for the issuance or renewal of an annual license:

(1) Two hundred fifty dollars (\$250) for a retailer's license to conduct a Type II gambling operation in the retailer's licensed premises.

(2) One thousand dollars (\$1,000) for a distributor's license.

(3) One thousand five hundred dollars (\$1,500) for a manufacturer's license.

Chapter 4. Licensing

Sec. 1. The commission may issue a retailer's license to an applicant that satisfies the requirements of this article.

Sec. 2. (a) To qualify for a retailer's license, a person must operate an establishment licensed under IC 7.1-3 to sell alcoholic beverages to customers for consumption on the person's licensed premises.

(b) Notwithstanding subsection (a), the following may not apply for a retailer's license under this article:

(1) A person holding a horse track permit under IC 7.1-3-17.7.

(2) A licensed owner of a riverboat licensed under IC 4-33.

(3) An operating agent who operates a riverboat in a historic hotel district under IC 4-33.

Sec. 3. (a) To obtain a retailer's license, a person must submit an application form to the commission. The application must include at least the following:

(1) The name and address of the applicant and of any person holding at least a ten percent (10%) interest in the applicant.

(2) The applicant's consent to credit investigations and criminal record searches.

(3) Waivers and releases signed by the applicant that the commission believes are necessary to ensure a full and complete review of the application.

(b) An applicant must furnish all information requested by the commission, including financial data and documents, certifications, consents, waivers, and individual histories.

(c) The commission shall review the applications for a retailer's license under this chapter and shall inform each applicant of the commission's decision concerning the issuance of a retailer's license.

(d) The costs of investigating an applicant for a retailer's license under this chapter shall be paid from the application fee paid by

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the applicant.

(e) An applicant for a retailer's license under this chapter must pay all additional costs:

- (1) associated with the investigation of the applicant; and
- (2) greater than the amount of the application fee paid by the applicant.

Sec. 4. The commission may issue a distributor's license to an applicant who meets the requirements of this article.

Sec. 5. The commission may issue a manufacturer's license to an applicant who meets the requirements of this article.

Sec. 6. (a) To obtain a distributor's license or a manufacturer's license, a person must submit an application to the commission on a form prescribed by the commission. An applicant shall furnish all information required by the commission.

(b) To qualify for a distributor's license or a manufacturer's license under this chapter, a person must also be a licensed distributor or manufacturer under IC 4-32.

Sec. 7. The commission shall conduct or cause to be conducted a background investigation of each applicant for licensure.

Sec. 8. Criminal history record information obtained during the investigation of an individual must be maintained by the commission for the term of the license and for any subsequent license term.

Sec. 9. The commission may require that an application or other document submitted by an applicant or a licensee must be sworn to or affirmed before a notary public.

Sec. 10. The commission may not issue a license to an applicant who:

- (1) has knowingly made a false statement of material fact to the commission;
- (2) is found by the commission to lack the necessary financial stability or responsibility for licensure;
- (3) if the applicant is an individual, is less than twenty-one (21) years of age on the date on which the application is received by the commission;
- (4) is on the most recent tax warrant list;
- (5) if the applicant is an individual, has been convicted of or entered a plea of guilty or nolo contendere to a felony in the ten (10) years preceding the date of the license application, unless the commission determines that:
 - (A) the individual has been pardoned or the individual's civil rights have been restored;

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(B) after the conviction or entry of the plea, the individual has engaged in the kind of law abiding commerce and good citizenship that would reflect well upon the integrity of the commission; or

(C) the individual has terminated a relationship with a person whose actions directly contributed to the conviction or entry of the plea;

(6) if the applicant is an individual, has been convicted of or entered a plea of guilty or nolo contendere to a violation of a gambling statute in any jurisdiction; or

(7) fails to provide all materials requested by the commission.

However, the commission may determine that a waiver is warranted under the circumstances for an individual described in subdivision (6).

Sec. 11. Credit and security investigation information submitted in connection with an application for a license under this article is confidential and may not be disclosed except for official purposes under this article or under a judicial order.

Sec. 12. A license issued under this article may not be transferred without prior written approval of the commission.

Sec. 13. If the commission proposes to revoke a license issued under this chapter, the licensee may continue to operate under the license until the commission has made a decision and all administrative appeals have been exhausted by the licensee.

Chapter 5. Type II Gambling Operations

Sec. 1. A retailer may offer the sale of Type II gambling games in accordance with this article.

Sec. 2. A Type II gambling game may be sold under this article only on the retailer's licensed premises.

Sec. 3. A retailer who obtains a Type II gambling game must obtain the Type II gambling game from a distributor or manufacturer licensed by the commission under this article.

Sec. 4. A retailer shall maintain accurate records of all financial aspects of the retailer's Type II gambling operation. A retailer shall make accurate reports of all financial aspects of the Type II gambling operation to the commission within the time established by the commission. The commission shall prescribe forms for this purpose. The commission shall, by rule, require a retailer to deposit the proceeds from the retailer's Type II gambling operation in a separate and segregated account established for that purpose. All Type II gambling games must be purchased from the separate account.

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1 **Sec. 5. (a) The total prizes awarded for one (1) Type II gambling**
 2 **game may not exceed two thousand dollars (\$2,000).**

3 **(b) A single prize awarded for one (1) winning ticket in a Type**
 4 **II gambling game may not exceed three hundred dollars (\$300).**

5 **(c) The selling price for one (1) ticket for a Type II gambling**
 6 **game may not exceed one dollar (\$1).**

7 **Sec. 6. The following persons may not play or participate in any**
 8 **manner in a Type II gambling game:**

9 **(1) An employee of the commission.**

10 **(2) A person less than twenty-one (21) years of age.**

11 **Chapter 6. Type II Gaming Enforcement Fund**

12 **Sec. 1. The Type II gaming enforcement fund is established. The**
 13 **commission shall administer the fund.**

14 **Sec. 2. The fees, civil penalties, and tax collected by the**
 15 **commission or the department under this article shall be deposited**
 16 **in the fund.**

17 **Sec. 3. Money in the fund does not revert to the state general**
 18 **fund at the end of a state fiscal year. The treasurer of state shall**
 19 **invest the money in the fund not currently needed to meet the**
 20 **obligations of the fund in the same manner as other public funds**
 21 **may be invested.**

22 **Sec. 4. There is appropriated annually to the commission from**
 23 **the fund an amount sufficient to cover the costs incurred by the**
 24 **commission for the purposes specified in this article.**

25 **Chapter 7. Penalties**

26 **Sec. 1. (a) The commission may suspend or revoke the license of**
 27 **or levy a civil penalty against a licensee for any of the following:**

28 **(1) Violation of a provision of this article or of a rule of the**
 29 **commission.**

30 **(2) Failure to accurately account for Type II gambling games.**

31 **(3) Failure to accurately account for sales proceeds from Type**
 32 **II gambling operations.**

33 **(4) Commission of a fraud, deceit, or misrepresentation.**

34 **(5) Conduct prejudicial to public confidence in the**
 35 **commission.**

36 **(b) If a violation is of a continuing nature, the commission may**
 37 **impose a civil penalty on a licensee for each day the violation**
 38 **continues.**

39 **Sec. 2. The commission may impose on a licensee the following**
 40 **civil penalties:**

41 **(1) Not more than one thousand dollars (\$1,000) for the first**
 42 **violation.**

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(2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.

(3) Not more than five thousand dollars (\$5,000) for each additional violation.

Sec. 3. In addition to the penalties described in section 2 of this chapter, the commission may do all or any of the following:

(1) Suspend or revoke a license issued under this article.

(2) Lengthen a period of suspension of a license issued under this article.

(3) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day a civil penalty goes unpaid.

Sec. 4. Except as provided in section 5 of this chapter, a person who violates this article commits a Class A infraction.

Sec. 5. A person who knowingly or intentionally:

(1) makes a false statement on an application submitted under this article;

(2) operates a Type II gambling operation in which wagering is conducted or is to be conducted in a manner other than the manner required under this article;

(3) permits a person less than twenty-one (21) years of age to play a Type II gambling game; or

(4) wagers or accepts a wager on a Type II gambling game at a location other than a retailer's licensed premises;

commits a Class A misdemeanor.

Chapter 8. Security

Sec. 1. The commission is responsible for security matters under this article. The commission may, with the approval of the governor, employ individuals who are necessary to carry out this chapter.

Sec. 2. The commission may do any of the following:

(1) Investigate an alleged violation of this article.

(2) Arrest an alleged violator of this article or of a rule adopted by the commission.

(3) Enter the following premises for the performance of the commission's lawful duties:

(A) A retailer's licensed premises.

(B) A place in which Type II gambling games are being purchased, sold, manufactured, printed, or stored.

(4) Take necessary equipment from the premises referred to in subdivision (3) for further investigation.

(5) Obtain full access to all financial records of the alleged

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1 violator on request.

2 (6) If there is a reason to believe that a violation has occurred,
3 search and inspect the premises where the violation is alleged
4 to have occurred or is occurring. A search under this
5 subdivision may not be conducted unless a warrant has first
6 been obtained by the commissioner. A contract entered into
7 by the commission may not include a provision allowing for
8 warrantless searches. A warrant may be obtained in the
9 county in which the search will be conducted or in Marion
10 County.

11 (7) Seize or take possession of:

12 (A) papers;

13 (B) records;

14 (C) tickets;

15 (D) currency; or

16 (E) other items;

17 related to an alleged violation.

18 **Sec. 3. The commission shall conduct investigations necessary**
19 **to ensure the security and integrity of the operation of Type II**
20 **gambling games under this article. The commission may conduct**
21 **investigations of the following:**

22 (1) Retailers.

23 (2) Applicants for licenses issued under this article.

24 (3) Licensed manufacturers and distributors.

25 (4) Employees of the commission under this article.

26 (5) Applicants for contracts or employment with the
27 commission under this article.

28 **Chapter 9. State Preemption**

29 **Sec. 1. Type II gambling games other than those authorized by**
30 **the commission under this article are not allowed in Indiana.**

31 **Sec. 2. Local taxes, regardless of type, may not be imposed on**
32 **the operations of the commission under this article or on the sale**
33 **of Type II gambling games under this article.**

34 **Sec. 3. (a) Local governmental authority concerning the**
35 **following is preempted by the state under this article:**

36 (1) All matters relating to the operation of Type II gambling
37 games.

38 (2) All matters relating to the possession, transportation,
39 advertising, sale, manufacture, printing, storing, or
40 distribution of Type II gambling games.

41 (b) A county, a municipality, or another political subdivision of
42 the state may not enact an ordinance relating to the commission's

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operations authorized by this article.

Sec. 4. A state or local law providing a penalty for or a restriction or prohibition against the operation of Type II gambling games or the possession, manufacture, transportation, distribution, advertising, printing, storing, or sale of Type II gambling games does not apply to the operation of Type II gambling games under this article or to the possession, manufacture, transportation, distribution, advertising, printing, storing, or sale of Type II gambling games under this article.

Chapter 10. Type II Gambling Game Excise Tax

Sec. 1. (a) An excise tax is imposed on the distribution of Type II gambling games in the amount of five and five-tenths percent (5.5%) of the gross receipts attributable to each deal purchased by a retailer.

(b) A retailer must prepay the amount of the tax imposed under subsection (a) to the distributor or manufacturer from which the retailer purchases the deal.

(c) A distributor or manufacturer that collects the tax paid under subsection (b) shall remit the tax to the department.

Sec. 2. The department shall establish procedures by which each licensee must account for the following:

(1) The tax collected under this chapter by the licensee.

(2) Each deal sold by the licensee.

(3) The funds received for the sale of each deal by the licensee.

Sec. 3. A payment by a licensee to the department may not be in cash. All payments must be in the form of a check, a draft, an electronic funds transfer, or another financial instrument authorized by the department. The department may require a licensee to establish a separate electronic funds transfer account to make payments to the department.

Sec. 4. All taxes imposed on a licensee under this chapter shall be remitted to the department at the times and as directed by the department. The department is responsible for all administrative functions related to the receipt of funds. The department may require a licensee to file with the department reports of the licensee's receipts and transactions in the sale of Type II gambling games. The department shall prescribe the form of the reports and the information to be contained in the reports.

Sec. 5. The department may at any time perform an audit of the books and records of a licensee to ensure compliance with this article.

Sec. 6. The department shall deposit all taxes collected under

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1 **this chapter in the Type II gaming enforcement fund.**

2 SECTION 2. IC 6-8.1-1-1 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. "Listed taxes" or
 4 "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through
 5 IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat
 6 wagering tax (IC 4-33-13); **the Type II gambling game excise tax**
 7 **(IC 4-35-10)**; the gross income tax (IC 6-2.1) (repealed); the utility
 8 receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5);
 9 the adjusted gross income tax (IC 6-3); the supplemental net income
 10 tax (IC 6-3-8) (repealed); the county adjusted gross income tax
 11 (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county
 12 economic development income tax (IC 6-3.5-7); the municipal option
 13 income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the
 14 financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the
 15 alternative fuel permit fee (IC 6-6-2.1); the special fuel tax
 16 (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax
 17 collected under a reciprocal agreement under IC 6-8.1-3; the motor
 18 vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax
 19 (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the
 20 cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor
 21 excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider
 22 excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the
 23 petroleum severance tax (IC 6-8-1); the various innkeeper's taxes
 24 (IC 6-9); the various county food and beverage taxes (IC 6-9); the
 25 county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee
 26 (IC 16-44-2); the emergency and hazardous chemical inventory form
 27 fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3
 28 and IC 9-30); the fees and penalties assessed for overweight vehicles
 29 (IC 9-20-4 and IC 9-30); the underground storage tank fee (IC 13-23);
 30 the solid waste management fee (IC 13-20-22); and any other tax or fee
 31 that the department is required to collect or administer.

32 SECTION 3. IC 35-45-5-11 IS ADDED TO THE INDIANA CODE
 33 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2005]: **Sec. 11. This chapter does not apply to Type II gambling**
 35 **games licensed under IC 4-35.**

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